IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

FAO (MVA) No.528 of 2002.

Judgment reserved on: 08.12.2005.

Date of decision: 6th Jan. 2006.

H.R.T.C. and another .....Appellants

-Versus-

Madan Lal and another .....Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Appellants: Mr.D.S.Parmar, vice counsel for the appellants.

For Respondents: Mr.Ashwani Sharma, counsel for respondent No.1.
Mr.Ramakant Sharma, counsel for respondent No. 2.

Deepak Gupta, J.

This appeal under Section 173 of the Motor Vehicles Act is directed against the award of the Motor Accident Claims Tribunal-III, Kangra at Dharamshala in MAC Petition No.63-K/99 decided on 30.4.2002.

The claimant Madan Lal was travelling in bus No.HP-37-0488 belonging to the HRTC and being driven by Brij Mohan. It is alleged that when he was alighting from the bus after he reached his destination the driver suddenly started the bus with the result that the claimant fell down and suffered injuries. The claimant filed a petition for grant of

compensation claiming Rs.1,72,000/- as compensation. The Tribunal has awarded him Rs.2,16,000/- in all. This award is under challenge in this appeal.

I have heard Sh.D.S.Parmar, learned counsel for the appellant and Sh.Ashwani Sharma, learned counsel for the claimant.

Mr.Parmar contends that as per the medical evidence the disability in this case is only 10% and the Tribunal has gravely erred in taking the loss in earning capacity at Rs.1000/- per month. On the other hand Mr.Ashwani Sharma contends that the claimant is a shepherd and a woodcutter and therefore the compensation awarded is just and reasonable.

In this behalf it would be relevant to refer to the statement of PW-2 who has stated that the deceased used to work as a woodcutter and had also kept some sheep and goats. According to this witness the claimant is unable to do his work of woodcutting and has sold his sheep and goats. He has stated that the age of the claimant is about 46 years.

Dr.S.M. Mehta has appeared as PW-3. According to him on 22.4.1998 an operation was performed on the claimant and K.Nailing was done. He stated that the petitioner was admitted in the hospital on 11.4.1998 and discharged on 11.5.1998. On 20.7.1998 the patient again came to the OPD and it was found that the fracture has been united. He further states that the disability of the claimant is 10% and has proved the disability certificate Exst.PW-3/D.

Madan Lal claimant appearing as PW-5 states that he is totally unable to work since the injury to his leg has not improved.

It is in the light of this evidence that the compensation has to be assessed. A perusal of the disability certificate shows that the disability has been assessed only at 10%. Two doctors were examined by the claimant. None of them have spoken with regard to the effect of the disability on the claimant. No doubt it is true that a particular percentage of disability may lead to a higher percentage of loss in earning capacity. However, this must be proved by some cogent evidence and not on the mere ipse dixit of the claimant. The medical evidence should have been led to prove as to how the work of the claimant will be affected by the injury in question. In fact the medical evidence in this case tends to suggest that the claimant's fracture has united. The disability of 10% to the leg is not such a disability as would affect earning capacity of the claimant to the extent of 33%.

The claimant remained in the hospital for one month and it can be presumed that thereafter also he was unable to work for about 2 more months. The doctor PW-3 has stated that on 20.7.1998 his X-ray was done and it was found that the fracture had untied. Therefore, the claimant at best can be awarded compensation for loss of income for 3 months and 10 days. Taking his income to be Rs.3000/- per month he is awarded Rs.10,000/- for loss of income.

The claimant must have spent some amount on his treatment, medical expenses and attendant charges. Keeping in view the nature of injury, period of treatment and the hospitalization of one month the claimant is held entitled to Rs.15,000/- for medical expenses, attendant charges etc.

Next question is with regard to the assessment of damages on account of loss of future income. The claimant has suffered 10% disability. Keeping in view the fact that he is doing manual work even if this disability is taken to affect the earning capacity of the claimant by 15% the loss would be Rs.450/- per month or Rs.5400/- per year. The age of the claimant is about 45 years and therefore the reasonable multiplier in such a case would be 13 and the compensation on this count works out to Rs.70,200/-.

The claimant is also held entitled to Rs.15,000/- for pain and suffering and another sum of Rs.15000/- for future discomfort, loss of amenities etc. The total compensation for which the claimant is entitled works out to Rs.1,25,200/-.

The award of the Tribunal is accordingly modified and the compensation is reduced from Rs.2,16,000/- to Rs.1,25,200/-. On this amount the claimant shall also be entitled to interest @ 9% p.a. w.e.f. 12.7.1999 the date of filing of the claim petition till deposit of the amount.

The appeal is allowed in the aforesaid terms with no order as to costs.

January 6, 2006. **(Deepak Gupta),**
PV **Judge**